

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION**

KENDRICK GARDNER

CIVIL ACTION NO. 17-0660

VERSUS

JUDGE S. MAURICE HICKS, JR.

STEVE PRATOR, ET AL.

MAGISTRATE JUDGE HAYES

JUDGMENT

For the reasons stated in the Report and Recommendation of the Magistrate Judge previously filed herein, after an independent review of the record, a *de novo* determination of the issues, consideration of the objections filed¹, and having determined that the findings are correct under applicable law,

IT IS ORDERED that the plaintiff's civil rights complaint is hereby **DENIED** and **DISMISSED WITH PREJUDICE** as frivolous and for failing to state a claim upon which relief can be granted in accordance with the provisions of 28 U.S.C. § § 1915(e)(2)(B)(i) and (ii). This is supported in the recent decision by the Fifth Circuit in Grogan v. Kumar, No. 15-60678, 2017 WL 4324977 (5th Cir. 2017). In Grogan, the court held that medical preferences are not embodied in constitutional standards; thus, Grogan's preferences did not state a claim for a constitutional violation. Id. at *3. Therefore, Gardner's medical preferences do not state a viable claim under the Constitution.

IT IS FURTHER ORDERED that the Clerk shall provide a copy of this order by regular mail, facsimile transmission, or e-mail to: (1) the District Clerk for the Eastern

¹ The Court construes Record Document 10 as objections to Magistrate Judge Hayes' Report and Recommendation.

District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas, 75702, Attention:
Keeper of the Three Strikes List.

THUS DONE AND SIGNED at Shreveport, Louisiana, on this 20th day of October,
2017.



S. MAURICE HICKS, JR.
UNITED STATES DISTRICT JUDGE